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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,167	01/09/2004	Scott R. Watterson	13914.877	7517
22913 7590 04/07/2008 WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111				
EXAMINER NGUYEN, TAM M				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
04/07/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/754,167

Applicant(s)

WATTERSON ET AL.

Examiner

TAM NGUYEN

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16, 18, 28-34 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16, 18, 28-34 and 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/10/07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-16, 18, 28-34 and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (2004/0147372) in view of Reyes et al. (7.070.542).

1. As to claims 1-9, 11-16, 18, 28-34 and 36-40 Wang discloses a cushioned treadmill comprising a frame (20), a treadbase (30) having a deck (37) pivotally coupled to one end of the frame, first and second rollers (34,35), an endless belt (36), a deflection sensor (53) and a self adjusting cushioning assembly (50) configured to provide cushioning to movement of the deck and adjust the amount of cushioning wherein the self-adjusting cushioning assembly comprises a user input mechanism/selection pad (22), a controller electrically coupled to the sensor and cushioning mechanism, inherently a plurality of coarse weight reading categories, and a plurality/variety of pre-adjustment settings such that the cushioning treadmill adjusts the amount of cushioning provided by the treadmill, inherently within a range of available cushioning from hard to medium to soft, based upon the pre-adjustment settings and the input provided by the user when a user, having a different weight from a previous user, steps on the treadbase (see Fig. 1 & Paragraph [0006], lines 7-13). Wang et al.

do not disclose that the self-adjusting cushioning assembly is configured to ascertain a coarse weight reading for a user or that the cushioning treadmill adjusts the amount of cushioning based upon the coarse weight reading. Reyes discloses a treadmill having a coarse weight measurement system that includes a deflection sensor (300) wherein the measured weight is then used to configure various parameters of the treadmill (see Col. 2, lines 63-67, Col. 5, lines 5-9 & Figs. 1, 3A & 6B). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the teaching of Reyes' weight measurement system with Wang's self-adjusting cushioning assembly such that a coarse weight is calculated from the deflection of the sensor to provide the user with the knowledge of his or her weight while also providing data to the cushioning assembly to adjust the amount of cushioning based on the weight to maintain a pre-selected cushioning effect.

Response to Arguments

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that Wang fails to disclose pre-adjustment settings, but Wang clearly discloses that the cushioning assembly can be pre-set to maintain particular amounts or levels of cushioning prior to a user stepping on the treadmill (see Paragraph [0016]). The modified treadmill disclosed by Wang '372 and Reyes '542 includes a self-adjusting cushioning assembly that includes a coarse weight detecting means wherein the detected weight is associated with a plurality of coarse weight reading categories and a plurality of pre-adjustment settings to adjust the amount of cushioning. Note, the plurality of coarse weight reading

categories is broadly interpreted as a "range of weights". For example, prior to a user stepping on the treadmill, a user pre-selects an amount of cushioning. In our example, we'll arbitrarily choose a medium amount of cushion. When a user steps on the treadmill, the user's weight is detected and compared against the "range of weights" at the disposal of the microprocessor wherein the user's weight determines the adjustment required to maintain a medium amount of cushioning.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TAM NGUYEN** whose telephone number is (571)272-4979. The examiner can normally be reached on M-F 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 31, 2008

/Tam Nguyen/
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764